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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:)	Bankruptcy Case No.
)	05-65949-fra7
CORY D. BOWMAN and)	
GINA M. BOWMAN,)	
)	MEMORANDUM OPINION
_____ Debtors.)	

Cory D. Bowman, one of the Debtors in this joint case, has filed a motion seeking to separate the two cases, and to dismiss Mr. Bowman's case. The motion will be denied, without prejudice.

The motion came on for hearing on October 27, 2005. Based on the Court's records, and the Debtors' representations to the Court, the Court finds as follows:

Mr. and Mrs. Bowman filed their joint petition for relief under Chapter 7 of the Code on July 21, 2005. After the petition was filed, Mr. Bowman was involved in a fatal traffic accident. He has been advised by counsel for the decedent's survivors that a claim may be made against him. The Court is further advised that the Bowmans' insurers have not, as of the date of the hearing,
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1 confirmed whether or not there is coverage under their automobile
2 liability policy.

3 On October 12, 2005 - after the accident - Mr. Bowman filed a
4 petition for relief under Chapter 13 of the Bankruptcy Code. He has
5 not, as of this writing, submitted a proposed plan. He concedes
6 that, if his prior petition is dismissed, he may convert the later
7 case to one under Chapter 7. His attorney, with appropriate candor,
8 advises that his purpose is to obtain protection from any potential
9 uninsured tort claim by obtaining a discharge of the claim.

10 The Court may dismiss a case under Chapter 7 only after
11 notice and a hearing, and only for cause. 11 U.S.C. § 707(a). The
12 Court of Appeals for the Ninth Circuit has held that a voluntary
13 Chapter 7 debtor is entitled to a dismissal so long as such
14 dismissal will not result in "legal prejudice" to any interested
15 party. In re International Airport in Partnership, 517 F.2d 510,
16 512, In re Hall, 15 B.R. 913, 917 (9th Cir. BAP 1981), In re Leach,
17 130 B.R. 855, 857 (9th Cir. BAP 1991).

18 The burden of proof with respect to prejudice to interested
19 parties lies with the Debtor. The potential tort claimants are
20 interested parties under the circumstances of this case, since their
21 claim may be subject to discharge under Chapter 7 if the relief
22 sought by Mr. Bowman is allowed. Mr. Bowman has not demonstrated to
23 the Court's satisfaction that the tort claimants would not be
24 prejudiced by a dismissal of the pending Chapter 7 case, and
25 subsequent conversion of the Chapter 13 case to Chapter 7. Indeed,
26 it appears likely that the claimants would be prejudiced, since

1 their claim would be subject to a Chapter 7 discharge without the
2 benefit of payments under a Chapter 13 reorganization.

3 All the foregoing assumes a number of things, including the
4 existence of an allowable claim and the absence of indemnity. Since
5 the circumstances surrounding this case, or at least the information
6 available to the Debtors, may still change, the Court believes that
7 further consideration of these issues should not be foreclosed at
8 this juncture. Accordingly, an order will be entered denying the
9 motion, without prejudice.

10 The foregoing constitutes the Court's findings of fact and
11 conclusions of law. An order consistent with the foregoing has been
12 entered.

13 Postscript: At the hearing, the Court expressed some concern
14 that the potential claimants may not have been given an opportunity
15 to be heard with respect to the motion. Counsel assured the Court
16 that attorneys for the potential claimants were aware of the
17 proceedings. The Court has no doubts on that point: however, to
18 ensure due process rights are observed in further proceedings, the
19 Debtors should ensure that the potential claimants and their
20 attorneys are included in the mailing matrices of both cases.

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23 FRANK R. ALLEY, III
24 Bankruptcy Judge

24 cc: Mr. Alan Seligson
25 Mr. Eric Roost
26 Mr. Derek Snelling
Mr. Samuel Hornreich
Ms. Gail Geiger